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General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

Matter of: Bristol Machining & Fabrication, Inc.

File: B-244490

Date: October 7, 1991

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DIGEST

1. Protest challenging rejection of bid for failure to acknowledge material amendment due to protester's failure to receive amendment is denied where, even assuming failure to receive the amendment was the result of misaddressing by contracting agency, there is no evidence that contracting agency failed in its obligation to use reasonable methods for the dissemination of solicitation documents to prospective contractors.
2. Contracting officer's determination concerning price reasonableness is a matter of administrative discretion that will not be questioned unless there is a showing that the determination itself is unreasonable, or that it is based on bad faith or fraud. The fact that a nonresponsive bid is much lower than the awardee's bid, standing alone, does not render the other bids unreasonable where the contracting officer reasonably based his determination of price reasonableness on past procurement history.
3. Protest that agency allowed the bidders' bid acceptance periods to lapse before making award is dismissed as untimely where protester raises this contention more than 10 working days after its notification of the award.

DECISION

Bristol Machining & Fabrication, Inc. protests the rejection of its bid as nonresponsive and the award of a contract to Coronet Machine Corporation under invitation for bids (IFB) No. DAAA09-90-B-0017, issued by the Department of the Army for mine cases. The Army rejected Bristol's bid because the firm

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failed to acknowledge and complete an amendment to the IFB. Bristol contends that the agency failed to send the amendment to Bristol's correct address and thereby prevented the firm from acknowledging the amendment.

We deny the protest in part and dismiss it in part.

The IFB, issued March 23, 1990, sought bids by April 24. Amendment No. 1, issued March 30, revised the quantity sought and incorporated various clauses into the IFB. Amendment No. 2, issued April 23, extended bid opening to May 31. By mailgram dated May 29, the agency extended bid opening indefinitely due to pending revisions to the specifications. On January 11, 1991, the Army issued amendment No. 3, which: (1) incorporated specification changes; (2) established a bid opening date of February 28; and (3) added a requirement for a Certificate of Procurement Integrity. With respect to the new requirement for a Certificate of Procurement Integrity, the amendment set forth the full text of the clause found at Federal Acquisition Regulation (FAR) § 52.203-8, which includes instructions to bidders and offerors on how to execute a Certificate of Procurement Integrity, as well as the applicable certificate. The text of the clause requires submission of the signed certificate with the bid, and explicitly advises that "[f]ailure of a bidder to submit the signed certificate with its bid shall render the bid nonresponsive."

Fourteen bids were received by the bid opening date of February 28; of the 14, 11 bidders,^{1/} including Bristol, failed to acknowledge amendment No. 3 and failed to include a signed Certificate of Procurement Integrity. Since the amendment was material, the Army rejected their bids as nonresponsive. Bristol's protest to our Office followed.

FAILURE TO RECEIVE AMENDMENT NO. 3

Bristol contends that it was improperly excluded from the competition as a result of the Army's allegedly deficient method for dissemination of bid materials. To support this claim, Bristol states that the Army used different addresses for the firm on three separate occasions. Specifically, the Army mailed the solicitation and amendment No. 1 to the wrong address--P.O. Box 960 rather than P.O. Box 990; the agency subsequently sent the May 29 mailgram to Bristol at its correct mailing address; and the Army directed Bristol's

^{1/} Of the 11, only Bristol and another bidder claimed that they did not receive the amendment.

rejection letter to its street address rather than its post office box address.^{2/}

According to the Army, since the bidders mailing list (BML) contained Bristol's correct address, the Army undoubtedly sent amendment No. 3 to Bristol's correct address. In response to the protester's allegation that the agency's method of disseminating materials was deficient as shown by the use of three different addresses on correspondence to Bristol from the agency, the contracting officer states that he did not use the BML to generate the rejection letter sent to Bristol's street address and that he has no record of the incorrect post office box address to which the protester refers. The contracting officer asserts that while Bristol was aware of the Army's use of the wrong address, it nevertheless failed to notify him that the firm had received bid materials that were misaddressed.

The Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1)(A) (1988), requires contracting agencies to obtain full and open competition through the use of competitive procedures, the dual purpose of which is to ensure that a procurement is open to all responsible sources and to provide the government with the opportunity to receive fair and reasonable prices. In pursuit of these goals, it is a contracting agency's affirmative obligation to use reasonable methods for the dissemination of solicitation documents to prospective contractors. Ktech Corp., B-240578, Dec. 4, 1990, 90-2 CPD ¶ 447. In particular, the government is required by regulation to add to the solicitation mailing list all firms that have been furnished invitations in response to their requests, so that they will be furnished copies of any amendments, unless it is known that the request was made by an entity which is not a prospective bidder. FAR § 14.205-1(c).

Concurrent with the agency's obligations in this regard, prospective contractors have an obligation to avail themselves of reasonable opportunities to obtain solicitation documents, particularly in a sealed bid procurement. Fort Myer Constr. Corp., B-239611, Sept. 12, 1990, 90-2 CPD ¶ 200. Thus, a prospective contractor generally bears the risk of not receiving a solicitation amendment unless there is evidence (other than nonreceipt by the protester) establishing that the agency failed to comply with the FAR requirements for notice and distribution of amendments. Shemya Contractors, 68 Comp. Gen. 213 (1989), 89-1 CPD ¶ 108.

^{2/} With respect to amendment No. 2, Bristol states that it did not retain the envelope in which it was received and therefore cannot state to what address it was sent.

The record shows that the envelopes containing the IFB and amendment No. 1 were addressed to an incorrect post office box number. Because Bristol never received amendment No. 3, we cannot determine if it too was sent to an incorrect address; nevertheless, even assuming it was, there is no indication that the error was the result of a significant deficiency in the agency's method of disseminating solicitation materials. Rather, the record shows that (1) the BML contained Bristol's correct post office box address; and (2) the May 29 mailgram--which was generated using the BML and was sent after amendment No. 2 and before amendment No. 3--was addressed to the correct post office box.^{3/} Thus, the record simply shows that there was an error, apparently in transcription of the post office box number, early in the procurement process.^{4/} This error, standing alone, does not establish that the agency failed to comply with the FAR requirements for proper notice and distribution of amendments.

While the Army apparently was unaware of the error, Bristol knew that the Army had used the same incorrect address on two separate occasions. Having signed and acknowledged the amendment which contained the incorrect address, Bristol should have known that the agency either did not have the firm's correct address on the BML or had made a typographical error when it sent the firm the amendment. Yet, there is no indication that Bristol took any measures--other than including its post office box address and its street address on the amendment--to alert the agency to the apparent error. We find that Bristol's inaction--as opposed to deficiencies on the part of the Army--clearly contributed to the failure to discover the addressing error. See NRC Data Sys., 65 Comp. Gen. 735 (1986), 86-2 CPD ¶ 84. Accordingly, we have no basis to sustain the protest.

PRICE REASONABLENESS

Bristol argues that the award was improper because the Army did not obtain reasonable bid prices from the three bidders that acknowledged amendment No. 3. Bristol bases this allegation on a comparison of its bid price with the awardee's bid price and argues that while it was the fifth low bidder and the awardee was the seventh low bidder, the 31 percent difference in their prices indicates price unreasonableness on

^{3/} The fact that the Army's letter rejecting Bristol's bid was sent to the firm's street address is not significant since the letter was not generated using the BML.

^{4/} As noted above, the envelopes containing the IFB and amendment No. 1 were addressed to P.O. Box 960 rather than P.O. Box 990.

the part of the awardee. As a result, the protester requests that the Army terminate the contract with Coronet and either allow the bidders who failed to acknowledge amendment No. 3 to "reaffirm" their bid prices or cancel the IFB and resolicit.

A determination concerning price reasonableness is a matter of administrative discretion involving the exercise of business judgment, which our Office will not question unless that determination is unreasonable or there is a showing of bad faith or fraud. Coastal Indus. Inc., B-230226, May 3, 1988, 88-1 CPD ¶ 431. In this connection, a determination concerning price reasonableness may be based upon a comparison with such factors as government estimates, past procurement history, current market conditions, or any other relevant factors, including those which have been revealed by the competition received. FAR § 15.407-2; Porter-Cable Corp., B-227401, June 19, 1987, 87-1 CPD ¶ 618. ✓

Here, the agency based its determination of price reasonableness on a comparison of the bids received and past procurement history. In this regard, the price history revealed that the agency obtained a larger quantity of items in 1989 at a unit price of \$1.91. Considering the combination of such factors as inflation and the agency's need to obtain a smaller quantity, the contracting officer determined that Coronet's unit price of \$2.57 was reasonable in comparison with the previous price of \$1.91. In view of the manner in which the agency made its price reasonableness determination, Bristol's argument--that a comparison of its price with the awardee's price demonstrates that the awardee's price was unreasonable--is unpersuasive. The fact that a next low bid is much higher than the lower bid does not by itself demonstrate price unreasonableness. See Tayloe Assocs., B-216110, June 3, 1985, 85-1 CPD ¶ 625 (where the awardee's price, which was 40 percent greater than the protester's, was not considered unreasonable).

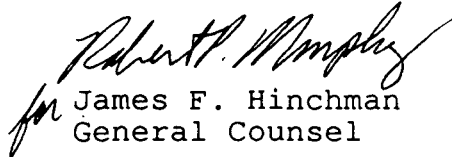
BID ACCEPTANCE PERIOD

Bristol claims that the award was improper because the bid acceptance period for all bidders had lapsed. The protester bases this allegation on language in the IFB, as originally issued, which stated that bids were to remain available for acceptance for 60 calendar days from the April 24 bid opening date, and the fact that no award was made during that 60-day period. This contention is untimely.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1991), require that protests such as Bristol's be filed not later than 10 working days after the basis of the protest is known or should have been known, whichever is earlier. Bristol's contention regarding the alleged lapse in the bid acceptance

period should have been lodged, at the latest, within 10 working days of the firm's receipt on June 6, 1991, of the Army's letter rejecting its bid and advising that award had been made to Coronet on May 31. Upon receipt of that letter, the firm should have known that the agency had, in fact, "allegedly allowed the bid acceptance period to lapse" by making award to Coronet more than 60 days after the original bid opening date. Since Bristol did not raise this issue until August 2, this protest basis is dismissed as untimely.5/

This protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel

5/ The allegation lacks merit in any event. The agency's May 29 mailgram extended the bid opening date indefinitely and amendment No. 3 subsequently established February 28 as the new bid opening date; therefore, the bid acceptance period was 60 days after February 28. During this period, Coronet extended its bid acceptance period to June 28. Since the award was made on May 31, Coronet's bid acceptance period did not expire.